

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BRANDON LEONARD and ALICIA
LEONARD, husband and wife and the marital
community comprised thereof,

Plaintiffs,

v.

FIRST AMERICAN PROPERTY &
CASUALTY INSURANCE COMPANY;
CRAWFORD & COMPANY; and TRIER J.
JOHNSON,

Defendants.

Case No.

Pierce County Case No. 19-2-11524-1

**NOTICE OF REMOVAL PURSUANT
TO 28 USC §1332, 28 USC §1441 and 28
USC §1446**

(Clerk's Action Required)

TO: The Clerk of the United States District Court for the Western District of Washington;
and

TO: Plaintiffs and Plaintiffs' Counsel of Record.

PLEASE TAKE NOTICE that Defendant First American Property & Casualty
Insurance Company ("Defendant" or "First American") hereby removes to this Court the state
court action described below. In support thereof, Defendant states as follows:

1. Plaintiffs filed the Summons and Complaint with Pierce County Superior Court
on October 17, 2019. On or about October 18, 2019, Plaintiffs caused to be served a civil
summons and complaint, captioned for the Superior Court of the State of Washington for

No.
NOTICE OF REMOVAL - 1

COLE | WATHEN | LEID | HALL, P.C.
1505 WESTLAKE AVENUE, SUITE 700
SEATTLE, WASHINGTON 98109
(206) 622-0494/FAX (206) 587-2476

Pierce County, on the Office of the Insurance Commissioner which thereafter served First American. The Cause Number assigned to the above-mentioned case is: 19-2-11524-1.

PARTIES

2. In the Complaint, Plaintiffs allege that they are residents of Pierce County, Washington.

3. Defendant First American is a foreign insurance company incorporated in the State of California with its principle place of business in the State of California. Defendant is licensed to conduct business in the State of Washington.

4. Plaintiffs' Complaint also names independent adjuster Crawford & Company and employee Trier J. Johnson, as defendants in this matter. Plaintiffs allege Mr. Johnson failed to exercise good faith in the handling of the claim and failure to respond to requests for information timely. *See*, Exhibit A ¶46.

5. However, Crawford & Company and Mr. Johnson are named in this action as claims adjusters, and therefore are not properly named parties as a matter of law pursuant to *Keodalah v. Allstate Ins. Co.*, ___ Wn.2d. ___, No. 95867-0, 2019 Wash. LEXIS 591 (Oct. 3, 2019). The improper naming of these parties constitutes fraudulent joinder and does not affect diversity jurisdiction.

AMOUNT IN CONTROVERSY

6. The removing Defendant bears the burden of establishing by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

7. In Plaintiffs' Complaint, Plaintiffs allege that they are entitled to insurance coverage under a policy of insurance issued by First American Property & Casualty Insurance Company. *See, generally*, Exhibit A (Complaint).

8. Plaintiffs have pled alleged damages in excess of \$200,000. *See*, Exhibit A ¶¶14-15.

9. Plaintiffs also allege that they are entitled to extra-contractual remedies. *See*, Exhibit A ¶¶42-46

10. In addition, Plaintiffs allege that Defendant is liable to Plaintiffs for enhanced damages pursuant to RCW 19.86.090 and for their attorneys' fees and costs incurred in the prosecution of this action. *See* Exhibit A, Prayer for Relief.

11. The amount in controversy, exclusive of interest and costs, therefore exceeds \$75,000.00. *See*, Exhibit A ¶14-15.

12. Where an underlying statute authorizes an award of attorney's fees, such fees may be included in the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). A reasonable estimate of attorney's fees likely to be expended throughout the entire litigation is properly included within the amount in controversy. *Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998).

13. After combining the above damages, attorneys fees, and costs, Defendant has shown, by a preponderance of the evidence, that the amount in controversy requirement for diversity jurisdiction is met.

JURISDICTION

14. For purposes of determining jurisdiction under 28 U.S.C. § 1332, Plaintiffs are citizens of the State of Washington. Defendant First American is a citizen of the State of

1 California. The remaining defendants are improperly joined.

2 15. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

3 16. This Court, therefore, has jurisdiction pursuant to 28 U.S.C. § 1332 and removal
4 is proper pursuant to 28 U.S.C. § 1441.

5 **TIMELINESS**

6 17. The Summons and Complaint against Defendant was served by Plaintiffs on the
7 Office of the Insurance Commissioner October 18, 2019, and First American was served
8 thereafter. The date of filing this Notice of Removal is within thirty (30) days from the date
9 this matter first became removable.

10 **INTRADISTRICT ASSIGNMENT**

11 18. Pursuant to Local Rule 101(e), this case should be assigned to the Tacoma
12 Division because the case is removed from Pierce County Superior Court. Plaintiffs allege in
13 the Complaint that they are residents of Pierce County and that First American is a foreign
14 corporation doing business in the State of Washington. *See*, Exhibit A ¶¶1-2.

15 **COPY OF SUMMONS AND COMPLAINT**

16 In accordance with Western District of Washington Local Rule 101(b), counsel for
17 Defendant hereby verifies that these Exhibits, along with this Notice of Removal, are true and
18 complete copies of all the records and proceedings filed in the state court in this matter.
19 Pursuant to Local Rule 101(b), Defendant is also filing contemporaneously with this Notice of
20 Removal a copy of the operative complaint as a separate attachment in the ECF system labeled
21 as the complaint.

22 1. Attached to this Notice as **Exhibit A** is a true and correct copy of the Complaint
23 filed with the Court.

2. Attached to this Notice as **Exhibit B** is a true and correct copy of the Case Information Cover Sheet filed with the Court.

3. Attached to this Notice as **Exhibit C** is a true and correct copy of the Order Setting Original Case Schedule issued and filed by the Court.

4. Attached to this Notice as **Exhibit D** is a true and correct copy of the Summons filed with the Court.

5. Attached to this Notice as **Exhibit E** is a true and correct copy of Affidavit/Declaration of Service of Crawford & Company filed with the Court.

6. Attached to this Notice as **Exhibit F** is a true and correct copy of Affidavit/Declaration of Service of First American filed with the Court.

7. Attached to this Notice as **Exhibit G** is a true and correct copy of Affidavit/Declaration of Service of Johnson filed with the Court.

8. Attached to this Notice as **Exhibit H** is a true and correct copy of the Notice of Appearance filed with the Court by Defendants.

9. Attached to this Notice as **Exhibit I** is a true and correct copy of the Confirmation of Service filed with the Court.

10. Attached to this Notice as **Exhibit J** is the printout for Pierce County showing the docket for the case, as of the date of filing.

11. Defendant will file the appropriate notice of this removal with the Clerk of the Pierce County Superior Court for Cause Number 19-2-11524-1.

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1 DATED this 15th day of November, 2019.

2 **COLE | WATHEN | LEID | HALL, P.C.**

3 /s/ Rory W. Leid

Rory W. Leid, WSBA #25075

4 /s/ Christopher J. Roslaniec

Christopher J. Roslaniec, WSBA #40568

Attorney for Defendants

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CERTIFICATE OF SERVICE

The undersigned makes the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

On the date given below, I hereby certify that I caused the foregoing to be filed using the United States District Court for Western District of Washington – Document Filing System (CM/ECF) and a true and correct copy to be served on the following parties in the manner indicated:

Counsel for Plaintiffs:

William C. Smart, WSBA #8192
Jeff N. Comstock, WSBA #41575
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jcomstock@kellerrohrback.com

Via Email/ECF

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 15th day of November, 2019, at Seattle, Washington.

s/ Jan Sherred
Jan Sherred, Legal Assistant
jsherred@cwlhlaw.com